



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
Robert Fitzgerald, Associate Member

DECISION - BOARD OF APPEALS CASE NO. 21-17

APPLICANT:
Edwin Fraser

LOCATION OF PROPERTY INVOLVED:
71 Harvard Street, Walpole and shown on the Assessors Map as Lot No. 40-288, Residence RB Zone.

APPLICATION:
A Special Permit under Section 5-B.2. of the Zoning Bylaw to allow an Accessory In-Law Suite in the single family home located at 71 Harvard Street, Walpole, MA 02081.

On November 15, 2017 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of a **Special Permit** to Edwin Fraser.

The following members were present and voting:

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member

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A motion was made by Craig Hiltz and seconded by James DeCelle to grant a Special Permit under Section 5-B.2. of the Zoning Bylaw to allow an Accessory In-Law Suite in the single family home located at 71 Harvard Street, Walpole, MA 02081.

The vote was **5-0-0 in favor**; therefore the application for a Special Permit is hereby granted, subject to the following conditions:

CONDITIONS:

1. The Accessory In-Law Suite shall not be held in separate ownership from the principal dwelling unit.
2. The Accessory In-Law Suite shall be located within a single-family dwelling and the owner of the dwelling must occupy the principal dwelling unit

3. The Accessory In-Law Suite shall only be occupied by individuals within the third degree of kinship of the owner of the principal dwelling unit.
4. If no Certificate of Occupancy for the original construction of the existing single-family home is available, the property owner shall provide other evidence of lawful occupancy as determined by the Building Commissioner;
5. The property owner shall record a certified copy of this Decision with the Norfolk County Registry of Deeds and provide a copy along with proof of recording to the Board of Appeals, Town Clerk and Building Department.
6. When ownership of the property changes, the new owner shall notify the Building Commissioner so as to update the Accessory In-Law Suite List.
7. Minimum lot size shall be 15,000 square feet.
8. The Accessory In-Law Suite shall be a minimum of 250 square feet and no larger than 33 percent of the total building size in the dwelling.
9. Any interior space, if used to calculate minimum building size, must meet requirements set forth in the State Building Code, 780 CMR for occupancy.
10. There shall be no more than 2 exterior landings for the In-Law Suite which may be covered and shall not exceed 50 square feet in area, and are not within the required setbacks. Stairs shall not be located within a required setback.
11. The proposed addition must keep the outside appearance of a single-family house.
12. All dimensional requirements shall comply with the applicable Sections of the Bylaw.
13. No more than one (1) Accessory In-Law Suite shall be allowed on the lot.
14. No more than one (1) water meter shall be allowed for the dwelling.
15. The life safety devices (smoke and CO detectors) in the main house and Accessory In-Law Suite will be brought into compliance with the current fire code
16. There shall be no lodgers in either the original dwelling unit or the Accessory In-Law Suite
17. Parking shall comply with the applicable Sections of the Bylaw

18. Prior to the issuance of a Building Permit, the property owner shall provide to the Building Inspector, along with a copy to the Zoning Board of Appeals a stamped plot plan complying with the conditions above with information including, but not limited to,

- a. Building Setbacks
- b. lot size
- c. water and sewer line location and water meter placement
- d. square footage of the existing dwelling
- e. proposed In-Law Suite with square footage
- f. calculation showing the square footage of the In-law suite divided by the total square footage of the proposed building (existing plus In-Law) shown as a percentage not exceeding 33%.
- g. Driveway and parking locations
- h. The Plot Plan shall be stamped by a licensed engineer who entered all the information included on the plan.

19. The Applicant shall receive a Certificate of Occupancy from the Building Department before occupying the Accessory In-Law Suite.

REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-B.2. to allow the requested Accessory In-Law Suite at the subject property. The Board finds that the in-law suite is in character with and follows the intent of the Zoning District in which it is located. Accordingly, the Board has determined that the Special Permit requested is warranted. Specifically, the Board made the following findings pursuant to Section 2.2.B.(1) of the Zoning Bylaw:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The Board finds that the proposed in-law suite complies with all of the criteria of Section 5-B.2 A & B as set forth below. Accordingly, the Board finds this condition satisfied.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that as conditioned above, the in-law suite will be less than 33% of the total square footage and therefore there will be no substantial changes to the existing parking or driveway. As such, this criterion is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Board finds that the proposed in-law suite should not create an adverse effect to the neighborhood. The single-family home being residential in nature will have no employees or customers. Accordingly, the Board finds that there will not be any adverse effect on the neighborhood and this condition is satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that as shown on the plans submitted with the Application, the single family dwelling is an already nonconforming lot, and the proposed in-law suite does not increase or create any additional nonconformities. As this house is a residential use, there is no buffer zone required. Therefore, the Board is satisfied that this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that the proposed in-law suite in the existing dwelling is residential in nature and will not pose a danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use is residential in nature. There is nothing being used, generated or otherwise that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Therefore, this condition is satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Board finds that the immediate neighborhood is residential in nature and the proposed undertaking is consistent with the area and immediate neighborhood. The architectural plans submitted with the application show the house is being renovated in a tasteful manner that is consistent with the size and construction of the other houses in the neighborhood. Specifically, the rear extension of the house keeps the appearance of a single family, and there are minimal changes that can be seen from the front and side view of the property. Additionally the location of the in-law suite at the rear of the existing dwelling follows the shape of the property's corner lot, making it in harmony with the neighborhood.

As such, the proposed alteration will not have an adverse effect to the character of the immediate neighborhood. Thus, this condition is satisfied.

(h) shall not be incompatible with the purpose of the Zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". The proposed in-law suite in the existing house will allow the owners to remain in their home, which is consistent with the purpose of the Bylaw. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the Zoning Bylaw and this condition is satisfied.

Additionally, the necessary Findings and Determinations noted in Section 5-B.2. B. & C. of the Zoning Bylaw have been satisfied and addressed through this Decision and the conditions.

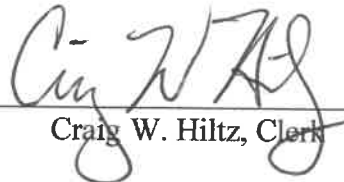
Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof

has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.”

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: “A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.”

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Craig W. Hiltz, Clerk

CH/am

cc:	Town Clerk	Engineering	Planning Board	Applicant
	Board of Selectmen	Building Inspector	Conservation Commission	Abutters

This decision was made on November 15, 2017 and filed with the Town Clerk on November 29, 2017